IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Civil Revision No.107 of 2007.
Date of decision: 12.12.2007

Smt.Sadhana ….**Petitioner**

Versus

Shri Dinesh Kumar ….**Respondent**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Petitioner: **Ms.Pratima Malhotra, Advocate.**

For the Respondent: **Mr.Anuj Gupta, Advocate.**

Dev Darshan Sud,J.

This revision has been filed by the respondent against the order passed by the learned District Judge, Shimla on 05.06.2007 in CMA No.32-S/3 of 2006.

The respondent, who is the husband of the petitioner, had instituted an application under Section 26 of the Hindu Marriage Act in a petition for divorce filed by him seeking dissolution of the marriage. In the application, allegations were made by the respondent-husband that the minor son of the parties to this petition was studying in Shimla Public School, Khalini and that he was bearing all expenditure for his studies etc. His son had been removed from Shimla by

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement?***

the petitioner-wife and had been kept at Rajpura. A prayer for the custody of the child was made. The learned District Judge passed the order directing that the respondent-husband be allowed and permitted to meet his child once in a month at Shimla. He noticed that both the parties to this petition are residing and working at Shimla and the child is studying at Rajpura staying with his grand maternal parents.

I have heard learned counsel for the parties.

An attempt was made to reconcile the matter, but of no consequence. Learned counsel appearing for the petitioner has assailed the order on a number of grounds, most of which touch the substantive merits of the petition for divorce filed before the District Judge. I may also notice that there are number of Civil and Criminal cases which have been instituted by the petitioner against the respondent at Rajpura. This does indicate that the child has been deliberately removed by the petitioner to Rajpura for the purposes of keeping alive the litigation between the parties. I need not add anything more lest it prejudices the case of the parties.

I am not satisfied that the grounds urged by the petitioner would entitle her for the vacation of the order passed by the learned District Judge. Neither of the parties to this petition can claim ownership of the child as if he was a chattel. At the same time, the petitioner cannot be given the exclusive custody of the

child to the extent that the respondent-father has no access to him. The order passed by the Court is interlocutory and I do not find any ground to interfere and hold that the exercise of jurisdiction by the learned District Judge is illegal and arbitrary. This revision petition is dismissed. There shall be no order as to costs.

All interim orders made stand vacated and miscellaneous applications filed shall stand dismissed.

December 12, 2007 **(Dev Darshan Sud)**
(aks) **Judge.**